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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/655,091	09/05/2000	Johann Meseth	GR 98 P 3112	8366

7590 09/18/2003
Lerner And Greenberg PA
2445 Hollywood Boulevard
Hollywood, FL 33020

EXAMINER

KEITH, JACK W

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 09/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/655,091

Applicant(s)
Meseth

Examiner
Jack Keith

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3641



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 25, 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above, claim(s) 9-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 7/25/2003 have been fully considered.

The 103 rejection utilizing Oosterkamp is withdrawn.

Applicant's arguments regarding the 102 rejection utilizing Gaouditz appears to be directed to how and in what manner his invention operates. Furthermore from applicant's arguments it is apparent that applicant does not see how and in what manner the examiner is reading the claimed invention on the rejections set forth in Paper no. 19.

To clarify the examiner's position the rejection utilizing Gaouditz has been revised below to further clarify how and in what manner claims are being interpreted.

Gaouditz discloses a containment vessel for a nuclear reactor comprising:

an interior space (8/10);

a condensing chamber (11) containing a cooling fluid (12) disposed in said interior space;

a pressure chamber (7, 29, 33-34) disposed in said interior space (8/10), said pressure chamber having a top region (*note that applicant's claims are open-ended and allow for chamber (29, 33-36) to house the condenser, thus the condenser is disposed in the pressure chamber*);

a condenser (37) communicating with said pressure chamber (7) through a flow path;

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a condensing pipe (e.g., 13, 15, 30, 31) leading into said condensing chamber (11) *(note that at least pipes 13 and 30 are located below the end of drain pipe (14); Additionally note that applicant's claim language is silent on where the condensing pipe begins);*

and a drain pipe (14) being permanently open, said drain pipe disposed in said interior space and fluidically connecting said top region of said pressure chamber to said condensing chamber, said drain pipe (14) bottom end being immersed in said condenser chamber, said drain pipe defining a direct connection to said condensing chamber (11), and said drain pipe not connected to said condenser.

While applicant's arguments appear to be directed to how and in what his containment vessel operates it is noted that applicant is claiming an apparatus. With regard to this argument and the claim language "for non-condensable gases" statements of intended use are essentially method limitations. Thus, the intended use claim language does not serve to patentably distinguish the claimed structure over that of the reference. See In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 512 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

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As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon (i.e., drain pipe for non-condensable gases) does not serve to limit an apparatus claim.

Note that pressure chamber (7) would inherently have air located therein. During an accident condition steam developing in the pressure chamber would entrain the air (i.e., non-condensable gas) and direct said air (non-condensable gases)/steam mixture into the condensing chamber.

Within the arguments presented applicant asserts a specific design criteria for the piping and accident conditions. None of said specific design criteria for the piping and accident conditions are set forth in the specification. Without such criteria and without experimental evidence to disprove that the structure of Gaouditz is not capable of meeting applicant's intent then the structure of Gaouditz reads on applicant's claimed invention.

Applicant further argues that the drain pipe (14) of Gaouditz is not located in the top region of the pressure chamber and that the drain pipe (14) is not connected to the condenser.

Review of Gaouditz figure 1 clearly shows that the drain pipe (14) is located in the upper portion of the pressure chamber (7). Note that if pressure chamber (7) were divided in two halves at reference numeral 32 it would be apparent that drain pipe (14) is located in the upper 1/4 portion of pressure chamber (7). Additionally from the figure one can clearly see that the condenser (37) and drain pipe (14) are not connected.

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While patent drawings are not drawn to scale, relationships clearly shown in the drawings of a reference patent cannot be disregarded in determining the patentability of claims. See In re Mraz, 59 CCPA 866, 455 F.2d 1069, 173 USPQ 25 (1972).

As set forth above the containment vessel of Gaouditz reads on applicant's claimed invention. The rejection of Gaouditz is herein incorporated by reference.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Keith whose telephone number is (703) 306-5752. The examiner can normally be reached on Monday through Friday from 7:00 to 4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306-4198.

The fax phone number for the organization where this application or the proceeding is assigned is (703) 305-7687. Fax number for submittals before Final is (703) 872-9326, After Final is (703) 872-9327 and customer service is (703) 872-9325.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Jack Keith
Examiner,
Art Unit 3641

jwk

September 15, 2003